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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,023

Applicant(s)

DORSEY, NATALIE

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1,8,9,18-22** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6209490 (herein 490) in view of US 5394835 (herein 835, as above).

For claim 1, 490 discloses a pet furniture comprising a sanitary compartment 30 for receiving litter box 48 therein; a feeding compartment 18 being separated from the sanitary compartment; a storage compartment 28 being separated from the sanitary and feeding compartments. However, 490 is silent about a litter container for storing clear unused litter to be dispensed into the litter box.

835 discloses a pet furniture as described above with a litter container for storing clean unused litter to be dispensed into a litter box therebelow. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a litter container with the features as described above by 835 in the furniture of 490 in order to provide clean litter for the litter box.

For claim 8, 490 as modified by 835 (emphasis on 490) discloses the feeding compartment and sanitary compartment are separated by a wall 22.

For claim 9, 490 as modified by 835 (emphasis on 490) discloses the feeding and storage compartments are separated by a shelf 22.

For claim 18, 490 as modified by 835 (emphasis on 490) discloses at least one door for closing said sanitary compartment, said at least one door 34,36 having at least one pet entrance opening formed therein (see fig. 1).

For claim 19, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have two doors each having a complementary one of said openings formed in the furniture of 490 as modified by 835, since it is has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

For claim 20, 490 as modified by 835 (emphasis on 490) discloses roll top door 27.

For claim 21, see claim 1.

For claim 22, it would have been an obvious substitution of functional equivalent to substitute the dispenser tray of 490 as modified by 835 (emphasis on 835) with a hose, since both types of dispenser mechanism would allow clean litter to be dispensed into the litter box.

3. **Claims 2-5** are rejected under 35 U.S.C. 103(a) as being unpatentable over 490 as modified by 835 as applied to claim 1 above, and further in view of US 5749317 (herein 317).

For claim 2, 317 discloses a litter cabinet comprising litter drawer 27. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a litter drawer as taught by 317 in the furniture of 490 as modified by

835 in order to allow easier access to the litter container by pulling the container out of the furniture like in a drawer effect.

For claims 3-5, in addition to the above, both 835 and 317 further discloses said litter drawer has a slanted bottom region. However, 490 as modified by 835 & 317 is silent about a litter dispensing hose is attached to said litter drawer at said slanted bottom region. It would have been an obvious substitution of functional equivalent to substitute the dispenser tray of 490 as modified by 835 & 317 (emphasis on 835) with a hose, since both types of dispenser mechanism would allow clean litter to be dispensed into the litter box. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a cap to seal the hose in the furniture of 490 as modified by 835 & 317 to prevent litter from falling out of the litter container. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a holding device for the hose in the furniture of 490 as modified by 835 & 317 for such holders are notoriously well known in the art.

4. **Claims 6-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over 490 as modified by 835 as applied to claim 1 above, and further in view of US 5577464 (herein 464). 464 teaches pet furniture having pull-out trays 40,38,36 for sanitary and feeding compartments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ pull-out trays as taught by 464 in the furniture of 490 as modified by 835 in order to allow easier access for the litter box and feed and water containers.

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5. **Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over 490 as modified by 835 as applied to claim 1 above, and further in view of US 3618568 (herein 568).

For claim 10, 568 teaches a pet furniture comprising a countertop including an openable portion 16 and a fixed portion 31. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an openable portion 16 and a fixed portion 31 as taught by 568 in the furniture of 490 as modified by 835 in order to allow certain portion of furniture to be opened for accessing the interior and certain portion not to open so as to provide a platform for the pet to stay on.

For claim 11, 490 as modified by 835 & 568 further discloses wherein said storage compartment is accessible through said openable portion of said countertop.

For claim 12, in addition to the above, 568 further discloses a bed 24 disposed inside the furniture. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a bed as further taught by 568 in the furniture of 490 as modified by 835 & 568 in order to provide the pet with a padded resting place. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the bed of 490 as modified by 835 & 568 on the countertop's fixed portion, depending where the pet goes most to lay down.

6. **Claims 13,14** are rejected under 35 U.S.C. 103(a) as being unpatentable over 490 as modified by 835 & 568 as applied to claims 1,10-12, above, and further in view of US 6397778 (herein 778) in view of US 5465682 (herein 682).

For claim 13, 778 teaches pet bed 10 that can be mounted on any structure. 682 teaches a pet furniture having a scratching post 32 which can be used as a support structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ both the scratching post of 682 to mount the pet bed of 778 in the furniture of 490 as modified by 835 & 568 in order to provide a place where the pet can rest or play on the scratching post.

For claim 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ two poles each have brackets for supporting said bed of 490 as modified by 835,568,682 & 778, for such mounting members are notoriously well known in the art to support elements.

7. **Claim 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over 490 as modified by 835,568,778,& 682 as applied to claims 1,10-14, above, and further in view of GB 2227401 (herein 401). 401 teaches a pet hammock which can be mounted to any supporting structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the hammock as taught by 401 in the furniture of 490 as modified by 835,568,778,& 682 for the pet to swing and sleep. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ brackets to mount the hammock of 490 as modified by 835,568,778,682 & 401, for such mounting members are notoriously well known in the art to support elements.

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8. **Claims 16,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over 490 as modified by 835 as applied to claim 1 above, and further in view of US 4683839 (herein 839).

For claim 16, 839 teaches pet furniture comprising a supply holder for sanitary compartment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a supply holder as taught by 839 in the sanitary compartment of 490 as modified by 835 in order to hold items placed in the compartment for organization.

For claim 17, in addition to the above, 839 teaches hooks 28 for holding litter bag 22. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ hooks as taught by 839 in the sanitary compartment of 490 as modified by 835 in order to hold items placed in the compartment for organization.

9. **Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5394835 (herein 835). 835 discloses a pet furniture comprising a sanitary compartment; a litter container 40 having a slanted bottom region (see figs. 7 & 8) , the litter container storing clean unused litter; a litter dispenser 60,90,12 attached to the litter container at the slanted bottom region. However, 835 is silent about the hose. It would have been an obvious substitution of functional equivalent to substitute the dispenser tray of 835 with a hose, since both types of dispenser mechanism would allow clean litter to be dispensed into the litter box.

Response to Arguments

10. Applicant's arguments filed 8/18/04 have been fully considered but they are not persuasive.

Applicant argued that Schwede does not disclose a feeding compartment being separate from the sanitary compartment.

Col. 3, lines 52-55, states that the partition 26 serves as a feeding and watering table or area. This area is elevated by refs. 24,26 and thus is a separate area or compartment from that of the sanitary compartment 30. The partitions 26,24 separate the feeding area from the sanitary area. In addition, the claim language states "being separate", thus the feeding area is being separate from the sanitary area by partitions 24,26. Just because the partition 26 doesn't extend all the way from one end wall to the other end wall doesn't mean that partition 26 doesn't separate area 30 from feeding area on partition 26. As long as there is some sort of separating element, in this case the partition 26, the feeding area of Schwede is consider to be separate compartment from the sanitary area 30.

Applicant argued that the Examiner is overlooking that such a substitution of functional equivalent of the tray for the hose in Gatta would destroy the intended function of Gatta. Replacing the sliding plates with a hose would for the doors 32 to be opened during the transfer of litter to allow the user to be able to dispense the litter. The open doors 32 would allow dust to escape from the structure, which in turn destroys an intended function of the Gatta reference.

The Examiner is not replacing the door for dust to escape from the structure, the Examiner is merely replacing one type of dispenser, the tray, with another type of dispenser, the hose. Whether the door lets dust in or out is not relevant in the rejection based on substitution of functional equivalent. Instead of using the dispensing tray of Gatta to allow the litter to dispense from the top container to the bottom container, one simply replaces the tray with a hose type dispenser to guide the litter from the top container to the bottom container. This is functional equivalent of dispenser types and does not alter Gatta intended use of the dispenser tray, which tray is intended to dispense litter from top container to bottom container. The hose can be user for a guide way and not needed to be touch by a user, thus, opening doors 32 or not is not the issue in the functional equivalent motivation.

Applicant argued that one way to overcome an obviousness rejection is by Applicant's discovery of the problem, i.e. to have a separate feeding compartment that is separated from the litter box for sanitary purposes.

In order to overcome an obviousness rejection based on discovery of a problem and solving it, Applicant must submit evidence to show that the problem was long standing in the art. In Applicant's case, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would still be unable to solve the problem. To merely say that Applicant has discovered a problem without evidence of such a problem being existed in the art would be merely an allegation without proof.

Conclusion


11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 703-305-0765. The examiner can normally be reached on Mon-Fri from 9:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn